**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**

**CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO. 191 OF 2007

Tukaram @ Shahu Gorakh Gaikwad. ..Appellant.

V/s.

Sau.Kamal Tukaram Gaikwad & Ors. ..Respondents.

Mr.S.H.Joshi & Vijay Gharat for appellant.

**CORAM: A.M.KHANWILKAR,J**

**DATE : JULY 9, 2007.**

**P.C. :**

1. Heard counsel for the appellant.

2. The only question pressed at the hearing of this appeal is that the female family member of the joint family is not entitled to seek relief of partition. This argument has been considered by the Courts below in the context of the provisions of the Hindu Succession (Maharashtra Amendment) Act 1994, which came into effect from 27th June, 1994. By virtue of the said amendment, the daughter has been recognised to be a co-parcener in her own right, in the same manner as is son. She is capable of disposing of property in proprietary rights under the coparcenary ownership by will or other testamentary disposition. It is well established that coparcener

can apply for partition. By legal fiction, daughter has been recognized as coparcener. Therefore, there can be no difficulty in accepting the conclusion of the Courts below that she would be entitled to relief of partition.

3. To get over this position, counsel for the appellant would contend that the said argument will be of no avail to the wife, who is plaintiff No.1. This argument clearly overlooks that plaintiff Nos. 2 and 3 are daughters and were entitled to ask for partition being coparceners, in their own rights. The fact that wife-plaintiff No.1 was also joined as one of the plaintiff can be no basis to deny relief of partition to plaintiff Nos.2 and 3.

4. The Courts below having decreed the suit in favour of the plaintiffs, will have to be understood to mean that they have decreed the suit for partition at the instance of plaintiff Nos. 2 and 3, who are admittedly coparceners in the joint Hindu family property.

5. Thus understood, no interference is warranted. Dismissed.